

## **GUILTY PLEA COLLOQUY**

**DATE**

No. **CR**

**United States v.**

AUSA:

Defendant's Lawyer:

Probation officer: **Name**

Interpreter: **None**

**[THE JUDGE WILL HAVE ANY INTERPRETER SWORN]**

**[THE JUDGE WILL ANNOUNCE THE CASE]**

You're **[Mr./Ms. defendant]**? I'm Paul Zoss, a United States Magistrate Judge. On **[date of Indictment/Information]**, (the United States Grand Jury for the Northern District of Iowa returned a \_\_\_\_ - count Indictment [against you] [in which you are charged in Counts \_\_\_\_ ]) **(or)** (the United States Attorney filed a \_\_\_\_ - count Information against you). In the **Indictment/Information**, the **(Grand Jury)/(United States Attorney)** charges [here, the judge will summarize the **charge(s)** against the defendant]. You've pled not guilty to **(this charge)/(these charges)**. I've been advised that you now wish to change your **plea(s)** and enter **(a plea) (pleas)** of guilty to (Count(s) \_\_\_\_ of) the **Indictment/Information**.

**[Mr./Ms. defense counsel]**, is that your understanding?

### **1. CONSENT TO PLEAD GUILTY BEFORE MAGISTRATE JUDGE**

**[Mr./Ms. defendant]**, this case is assigned to a district court judge, Judge **[name of district court judge]**. You have the right under the United States Constitution to have a district court judge preside over any guilty plea hearing. I can preside over this hearing, but since I'm a magistrate judge, I can only do so with your voluntary consent. You've signed a form stating that you consent to have me preside over this plea hearing. Is that what you'd like me to do?

**[Mr./Ms. defense counsel]**, do you believe your client's consent is knowing and voluntary?

Very well, I'll accept the defendant's consent and go ahead with the guilty plea hearing.

**[NOTE TO THE JUDGE – THERE IS [A] [NO] PLEA AGREEMENT]**

## 2. THE OATH

[Mr./Ms. defendant], would you please raise your hand?

### [THE JUDGE WILL PLACE THE DEFENDANT UNDER OATH]

You may put your hand down. [Mr./Ms. defendant], you're now under oath. You should tell the truth because if you don't, you could be prosecuted for perjury or for making a false statement. In any such prosecution, the Government could use against you any statements you make here under oath.

Even though you've come here today to plead guilty [and apparently have signed a plea agreement], you have the right to stay with your not-guilty plea(s). If you change your mind during this hearing and decide you don't want to plead guilty, just tell me and I'll recess the hearing and [schedule your case for trial] [your case will go to trial as scheduled].

Do you understand?

## 3. ENSURING MENTAL CAPACITY

[Mr./Ms. defendant], would you please state your full name? How old are you?

*[Where it appears the defendant may not be a U.S. citizen, the judge may ask the following questions: Are you a U.S. Citizen? **If the answer is "no,"** the judge will ask the following question: Of what country are you a citizen?]*

*[Where it does not appear English is the defendant's native language, the judge may ask the following questions: Is (Spanish) your native language? Are you able to hear and understand what the interpreter is saying to you in (Spanish)?]*

How far did you go in school? Can you can read and write?

[Mr./Ms. defendant], will you promise to let me know if you have problems hearing or understanding anything that comes up during this hearing today?

Have you ever **abused drugs or alcohol**? *[If "yes," then the judge will say the following:]* Do you think the fact you used (drugs and/or alcohol) in the past might make it hard for you to understand the legal matters we'll be talking about at this hearing today?

Have you ever suffered from **depression, anxiety, or any other mental illness**? *[If “yes,” then the judge will say the following:]* Please give me a brief summary of your mental health problems. Do you think your mental health problems *(or the medications you’re taking to treat your mental health problems)* might make it hard for you to understand the legal matters we’ll be talking about at this hearing today?

Within the past week, have you used or taken **alcohol, legal or illegal drugs, or prescription or non-prescription medication**? *[If “yes,” then the judge will say the following:]* What have you used or taken? Do you think this might interfere with your ability to understand the legal matters we’ll be talking about at this hearing today?

Do you feel you’re competent to proceed with a plea hearing today?

**[Mr./Ms. defense counsel]**, do you agree?

**I ALSO AGREE, AND SO FIND.**

#### **4. RIGHT TO A LAWYER**

**[Mr./Ms. defendant]**, you have the right to a lawyer to help and represent you during every stage of this case. If at any time you can’t afford a lawyer, you’re entitled to a free one.

*(If the defendant’s lawyer is not with the Federal Public Defender’s office, the judge will say the following.)* **[Mr./Ms. defense counsel]**, are you retained or appointed?

**[Mr./Ms. defendant]**, are you satisfied with the representation you’ve received from **[Mr./Ms. defense counsel]**?

#### **5. INDICTMENT/INFORMATION**

**[Mr./Ms. defendant]**, (as I’ve told you, you’ve been charged with [here, the judge may again summarize the **charge(s)** against the defendant) **(or)** (I’ve described the **charge(s)** against you). Do you understand what you’ve been charged with in this case?

Have you had the chance to talk with **[Mr./Ms. defense counsel]** as much as you want about **(this charge)/(these charges)**?

[Mr./Ms. defense counsel], do you believe your client understands the charge(s) against him/her?

## 6. PENALTIES

[Mr./Ms. defendant], under the statutes that apply to (this charge)/(these charges),

(On Count 1,) You could be sent to prison for up to (\_\_\_\_\_ years) (life), [and there's a mandatory minimum prison sentence of \_\_\_\_\_ years]; you could be placed on supervised release for up to (\_\_\_\_\_ years) (life), [and there's a mandatory minimum term of supervised release of \_\_\_\_\_ years]; and you could be fined up to \$\_\_\_\_\_.

[(Repeat for any other counts.)]

Judge [name of district court judge] also will impose, and you'll have to pay, a special assessment of \$100 (on each count to which you plead guilty, which would be a total of \$\_\_\_\_\_). (S)he also has the power to order **forfeiture** and **restitution**.

Do you understand the statutory penalties?

[If the offense involves **FRAUD** or other intentionally deceptive practices, the judge will say the following:] Since you have been charged with fraud, the court also could order you to provide notice of your conviction to any victims of the offense.

[If this is a **SEX CRIME**, the judge will say the following:] As a result of this conviction, you will be required to register as a sex offender with the national registry of sex offenders, and you'll likely be required to register as a sex offender under the laws of the state where you live. Such registration may be required of you for the rest of your life. (The judge will say the following if the defendant will not be in custody following his/her plea: In fact, you should check with your local authorities to see if you're required, as a result of this plea, to register immediately as a sex offender under the laws of the state where you live.)

Do you understand?

You should understand you'll be in custody for all of any [jail or] prison sentence you receive, reduced only by any credit for good time you may earn. You can earn a reduction in your prison sentence for "good time" of up to about 15% of your sentence, or about 54 days per year[, but only if you're sentenced to more than one year in custody]. For example,

If you're sentenced to six months or one year in jail, you won't earn any good time credits, but will have to serve your entire sentence in some type of custody.

If you're sentenced to (2 yrs./ 5 yrs./ 10 yrs./ 15 yrs./ 20 yrs.) in prison, you could earn about (3½ mo./ 9 mo./ 1½ yrs./ 27 mo./ 3 yrs.) off of your prison sentence for good time, which, if you earned all of your good time credits, would reduce your time in custody on the (2 yr./ 5 yr./ 10 yr./ 15 yr./ 20 yr.) sentence to (20½ mo./ 51 mo./ 8½ yrs./ 12¾ yrs./ 17 yrs.).

(This is)/(These are) just (an) example(s). I don't know what your sentence will be – that will be up to Judge [name of district court judge] – but, whatever sentence you receive, you'll never see a parole board or be paroled out of prison because there's no parole in federal court.

*[If the defendant **is a U.S. citizen**, the judge will say the following:]*

After you've served your prison sentence, you'll be placed on supervised release, during which your conduct will be monitored by a probation officer. There are a number of standard conditions of supervised release. For example, you can't commit any federal, state, or local crimes, nor can you possess firearms, ammunition, or illegal controlled substances. Judge [name of district court judge] could impose additional special conditions. If you violate any of the conditions of your supervised release, Judge [name of district court judge] could revoke your supervised release, and require you to serve in prison all or part of the time you otherwise would have been on supervised release.

*[If the defendant **is not a U.S. citizen**, the judge will say the following:]*

After you've served your prison sentence, you'll be required to serve a term of supervised release. Since you're not a U.S. citizen, you'll likely be deported immediately after serving your prison sentence, and a condition of your supervised release will be that you not reenter the United States while on supervised release. If you reenter the United States while on supervised release, Judge [name of district court judge] likely would revoke your supervised release and require you to serve in prison all or part of the time you otherwise would have been on supervised release. This prison term would be consecutive to any sentence you'd receive if you were convicted on a charge of illegally reentering the United States.

Do you have any questions about good time or supervised release?

## 7. COLLATERAL CONSEQUENCES

*[If the defendant is a U.S. citizen, the judge will say the following:]*

As a result of this conviction, you'll also be deprived of the right to vote, to serve on a jury, to hold public office, and to possess firearms and ammunition.

*[If the defendant is not a U.S. citizen, the judge will say the following:]*

Since you're not a U.S. citizen, this conviction could affect your status with United States immigration authorities, and could result in the loss of any rights you may have to residency in the United States. In fact, as a result of this conviction, after you're released from prison, you'll likely be deported[, *and it's likely you'll never be allowed to legally reenter the United States*].

Do you understand?

## 8. RIGHT TO A JURY TRIAL

**[Mr./Ms. defendant]**, if you plead guilty, you'll be giving up your one chance for a jury trial on **(this charge)/(these charges)**.

You have the right to a speedy, public jury trial before a jury of 12 people selected from a cross-section of this community. You have the right to be represented by a lawyer throughout the trial. You and your lawyer would help choose the people who'd serve on your jury.

Your jurors would promise under oath to try your case fairly and justly, based only on what's submitted into evidence at trial and the instructions given to them by Judge **[name of district court judge]**. Judge **[name of district court judge]** would tell the jury that you're presumed innocent, and that the presumption of innocence remains with you unless and until, at the end of your trial, the prosecution has convinced the jury of your guilt beyond a reasonable doubt. Judge **[name of district court judge]** also would tell the jury that the presumption of innocence alone is enough for you to be acquitted of **(this charge)/(these charges)**.

Any verdict by the jury would have to be unanimous, which means all 12 jurors would have to agree on the verdict.

[Mr./Ms. defendant], do you understand, you'd be presumed innocent at your trial, and could not be convicted by the jury unless the prosecution proved your guilt beyond a reasonable doubt?

The prosecution would have to call its witnesses to testify under oath here in court. You'd be able to see and hear their testimony, and they'd be able to see you while they're testifying. [Mr./Ms. defense counsel] wouldn't have to question the prosecution's witnesses at all, but if (s)he wanted to, (s)he could confront them by cross-examining them.

The burden of proof would remain on the prosecution throughout the trial. You wouldn't have to put on a defense or produce any evidence. However, if you wanted to, you could present any relevant evidence to the jury. For example, you could make witnesses come to court by having subpoenas served on them. These subpoenas could be served anywhere in the United States, and would require your witnesses to come to this court for your trial. If you couldn't afford to pay the costs and fees necessary to serve the subpoenas or get your witnesses to court, I'd make the Government pay those costs and fees.

You could testify at your trial if you wanted to, but you wouldn't have to. If you decided not to testify, [Mr./Ms. prosecutor], the prosecutor, wouldn't say anything about it to the jury. In fact, Judge [name of district court judge] would tell the jurors that you have a constitutional right not to testify, and (s)he'd also tell them that they must not hold it against you if you don't testify.

You'd have the right to appeal, and the right to a free lawyer to help you with your appeal if you couldn't afford one.

Do you understand the rights I've just described to you?

## **9. WAIVER OF RIGHTS BY PLEADING GUILTY**

If you plead guilty, you'll be giving up your right to a jury trial. You also will be waiving your right to raise any matters that might have helped you to defend this case, including issues you [have raised or] could have raised in motions for discovery, motions challenging the Indictment/Information, motions to dismiss the case, or motions to suppress evidence.



If you plead guilty, you'll have no trial. You'll be adjudged guilty based on your plea(s), just as if a jury had returned a guilty verdict against you.

[Mr./Ms. defendant], do you understand, if you plead guilty, you won't have a jury trial or any other trial?

## 10. SENTENCING HEARING

[Mr./Ms. defendant], if you plead guilty here today, I'll order a **presentence investigation report**, which will be prepared by [Mr./Ms. probation officer] a probation officer. [Mr./Ms. probation officer] will conduct a thorough investigation of this case, and then will prepare a draft presentence investigation report. (S)he'll send a copy of the draft report to the lawyers. You should go over the report carefully. *[If you can't read the report in English, you should have it read to you in (Spanish) (your native language).]* Be sure to point out to [Mr./Ms. defense counsel] if there are any mistakes in the report or if anything significant is left out of the report so (s)he can let [Mr./Ms. probation officer] know about it. [Mr./Ms. probation officer] will be happy to change the report to make it complete and correct.

After the report has been finalized, it will be sent to Judge [name of district court judge], and copies of the report will be sent to the lawyers. Then you'll have a sentencing hearing.

At the sentencing hearing, the lawyers can present witnesses and exhibits on any sentencing issue, and you'll be given a chance to talk to Judge [name of district court judge] directly to tell him/her anything you want.

During the sentencing hearing, Judge [name of district court judge] will perform a calculation under the federal sentencing guidelines, which are guidelines issued by the United States Sentencing Commission. This calculation will result in an "advisory guideline range," which is a range of months within which the Sentencing Commission suggests that you be sent to [jail or] prison. Judge [name of district court judge] will consider this range in determining your sentence, but (s)he's not required to sentence you within this range. So long as the sentence (s)he gives you is reasonable, (s)he can depart from the advisory guideline range based on the



factors listed in the sentencing guidelines, or (s)he can vary from the range based on the factors listed in the sentencing statutes.

*[If there is a stipulation regarding the guidelines in a plea agreement, the judge will have the plea agreement offered into evidence, and discuss the stipulation. If not, the judge will ask defense counsel, and then the prosecutor, “[Mr./Ms. defense counsel], what’s your prediction as to how the Guidelines might work in this case?” “[Mr./Ms. prosecutor]?” In appropriate cases, the judge will ask if “the safety valve” might apply. The judge then will say the following:]*

[Mr./Ms. defendant], I’ve asked for these predictions just to give you an idea of what could happen at your sentencing hearing. You should understand that neither the lawyers nor I will be sentencing you. Judge [name of district court judge] has the responsibility for determining your sentence. At the sentencing hearing, (s)he’ll review the presentence investigation report, consider the evidence offered at the sentencing hearing, and listen to the arguments of the lawyers and any statement you make, and then arrive at his/her own guideline calculation. The possible guideline calculation(s) we’ve talked about today are not binding on Judge [name of district court judge]. (S)he may calculate a higher or lower advisory guideline range than [what the parties have stipulated or] what we’ve talked about here. Also, as I’ve said, these guidelines are advisory only. Judge [name of district court judge] could depart or vary from whatever advisory guideline range (s)he calculates and impose a sentence outside of the range. This means you could receive a sentence below or above the advisory guideline range, and in fact, you could receive a sentence all the way up to the maximum statutory sentence.

*[If there is a statutory mandatory minimum sentence, the judge will say the following:]* You also should understand that however the guideline range is calculated, and regardless of whether Judge [name of district court judge] departs or varies from the guidelines, (s)he can’t sentence you below \* years, the statutory mandatory minimum, even if (s)he wants to[, unless (the safety valve applies or) you provide substantial assistance to the Government and the United States Attorney’s Office asks him/her to sentence you below the mandatory minimum. You should understand that even if you believe you’ve provided substantial assistance to the Government, there’s no guarantee the U.S. Attorney will file a departure motion or that Judge [name of district court judge] will sentence you below the mandatory minimum].

[Mr./Ms. defendant], do you understand, the sentence Judge [name of district court judge] gives you may be different from what you're hoping for or what [Mr./Ms. defense counsel] may have predicted?

[Mr./Ms. defendant], after your guilty plea(s) is/are accepted by Judge [name of district court judge], you'll have no right to withdraw your guilty plea(s), even if you don't like the sentence (s)he gives you. However, under some circumstances, you and/or the Government may have the right to appeal from what happens at the sentencing hearing.

Do you think you understand how your sentencing hearing would be conducted?

**11. PLEA AGREEMENT** *[If there is a plea agreement, the judge will do the following, but if there is no plea agreement, the judge will skip to paragraph 12, below.]*

*[If not already in evidence, the judge will have the prosecutor offer the plea agreement.]*

*[The judge will ensure the written plea agreement is in front of the defendant and the defendant's lawyer.]*

*[The judge will make certain that the initials and signature on the plea agreement were placed there by the defendant, and then tell the defendant the following:]*

Do you understand that by initialing and signing the plea agreement, you're agreeing to be bound by its terms, and agreeing that the facts recited in the plea agreement are true and accurate?

Have you read the entire plea agreement? Do you understand all of its terms?

*[The judge may talk about some of the terms of the plea agreement, or (s)he may have the prosecutor review the plea agreement with the defendant.]*

*[If applicable, the judge may talk about how substantial assistance might operate in this case.]*

*[The judge may review the factual basis language in the plea agreement.]*

*[The judge will ask the following:]*

**[Mr./Ms. defense counsel]**, do you believe your client understands the plea agreement?

**[Mr./Ms. defendant]**, do you have any questions about the plea agreement?

**[Mr./Ms. prosecutor]**, does the plea agreement have any provisions waiving the right to appeal or to collaterally attack the sentence? Have I accurately described the terms of the plea agreement I've discussed with the defendant?

## **12. ELEMENTS AND FACTUAL BASIS**

*[The judge either will have the prosecutor discuss the elements and the required factual basis for each count, or will do so **him/herself**, i.e.:]*

**[Mr./Ms. defendant]**, to convict you on Count 1 of the **Indictment/Information**, the prosecution would have to prove all of the following elements beyond a reasonable doubt to the satisfaction of a unanimous jury:

*[The judge/prosecutor will recite the elements and obtain a factual basis for the guilty plea to Count 1, and will repeat the process for any other counts.]*

**[Mr./Ms. prosecutor]**, did [I] [you] correctly explain the elements of the **charge(s)** to the defendant? Do you believe [I've] [you've] established an adequate factual basis for **(a guilty plea)/(guilty pleas)** to the **charge(s)**?

**[Mr./Ms. defense counsel]**, do you think your client understands the elements of the **charge(s)** against **him/her**? Have you had full access to the Government's discovery materials? Do you believe they support a factual basis for **(a guilty plea)/(guilty pleas)** to the **charge(s)**? Do you know of any possible defenses to the **charge(s)** you haven't discussed with your client?

## **13. ENSURING VOLUNTARINESS OF PLEA**

**[Mr./Ms. defendant]**, has anyone forced or pressured you to plead guilty, or made any promises to you to get you to plead guilty[, *other than what's in the plea agreement*]?

[Mr./Ms. defense counsel], do you believe (a guilty plea)/(guilty pleas) by your client to the charge(s) against him/her would be voluntary?

14. [The judge will ask the lawyers the following question:] **ARE THERE ANY FURTHER QUESTIONS YOU THINK I SHOULD ASK, [Mr./Ms. defense counsel]? [Mr./Ms. prosecutor]?**
15. [Mr./Ms. defendant], **DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING? DO YOU STILL WANT TO PLEAD GUILTY? ARE YOU PLEADING GUILTY OF YOUR OWN FREE WILL, AND BECAUSE YOU ARE, IN FACT, GUILTY?**
16. [Mr./Ms. defendant], **FORMALLY AND FOR THE RECORD**, how do you plead to Count I of the Indictment/Information -- guilty or not guilty? (Repeat for any other counts)

**The record should reflect that the defendant has pled guilty to [Counts \_\_\_\_\_ of] the Indictment/Information.**

17. **I find that:**

the defendant is competent; (s)he fully understands the charge(s) against him/her; there's a factual basis for his/her plea(s); (s)he knows the maximum punishment that could be imposed on the charge(s); and (s)he knows his/her jury rights and has voluntarily waived those rights.

**I further find that:**

the defendant's decision to plead guilty was voluntary, knowing, and not the result of any force, pressure, threats, or promises[, *other than the promises made by the Government in the plea agreement*].

Therefore, I find the defendant should be adjudged guilty based on his/her plea(s) of guilty.

18. **Report and Recommendation**

I've signed and will file my Report and Recommendation, recommending that the defendant's guilty plea(s) be accepted. [I'm serving] [Later today, I'll file and have served] copies of the Report and Recommendation on the lawyers for the parties.

**[THE JUDGE WILL PROVIDE LAWYERS WITH COPY OF REPORT AND RECOMMENDATION.]** The parties are advised they have 10 days from today's date, not counting weekends and holidays, to file objections to the Report and Recommendation. If a party fails to file a timely objection, the party will have waived the right to make the objection. After reviewing any objections, Judge **[name of district court judge]** may accept the Report and Recommendation, and the defendant's **plea(s)** of guilty, by simply entering a written order doing so.

19. I hereby **ORDER A PRESENTENCE INVESTIGATION REPORT**. The parties should pay careful attention to the deadlines relating to the preparation of the report. *[The judge will tell the defendant about any scheduled sentencing date – e.g., “Judge **[name of district court judge]** has scheduled a sentencing hearing in this case for (date and time)” or “Judge **[name of district court judge]** will schedule a sentencing hearing in this case for a later date.”]*
20. *[The judge will take care of any detention issues and, if appropriate, remand the defendant to the custody of the U.S. Marshal.]*
21. *[The judge will ask the lawyers the following question:]* **IS THERE ANYTHING FURTHER THAT NEEDS TO BE DONE TO CONCLUDE THIS HEARING **[Mr./Ms. defense counsel]**? **[Mr./Ms. prosecutor]**?**
22. *[The judge will address the defendant, if appropriate.]*

**We are in recess.**